

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

SEP 11 2024

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY AK
DEPUTY

MARK ANTHONY ORTEGA

Plaintiff,

v.

ELITE LIVING REALTY, LLC

Defendant.

Case No. SA-24-CV-00768-JKP-HJB

PLAINTIFF'S MOTION FOR CLERK'S ENTRY OF DEFAULT

Plaintiff, Mark Anthony Ortega ("Plaintiff"), requests that the Clerk of Court enter default against Defendant Elite Living Realty, LLC ("EL Realty"), pursuant to Federal Rule of Civil Procedure 55(a). In support of this request, Plaintiff states the following:

SUMMARY

1. The proof of service (ECF No. 6) demonstrates that EL Realty was properly served with a copy of Plaintiff's Original Complaint (ECF No. 1) in this case on July 23, 2024.
2. More than twenty-one (21) days have elapsed since the date of service of process, and EL Realty has failed to answer, challenge, or otherwise defend as required by Federal Rule of Civil Procedure 12(a)(1)(A) and as demonstrated by the record in this action and by the Declaration of Mark Anthony Ortega. *See* ECF No. 8.

BACKGROUND

3. On July 15, 2024, Plaintiff filed his Original Complaint (ECF No. 1) against EL Realty in this suit seeking monetary relief for violations of the Telephone Consumer Protection

Act ("TCPA"), 47 U.S.C. § 227 et seq., and the Texas Business and Commercial Code, Chapter 302.

4. Plaintiff properly served EL Realty with the Complaint and Summons on July 23, 2024 (ECF No. 6).

5. EL Realty has not appeared in this action.

ARGUMENTS AND AUTHORITIES

6. The Clerk of Court must enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); *see N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996).

7. The Clerk should enter a default against EL Realty because it did not file a responsive pleading within 21 days of service. Fed. R. Civ. P. 12(a)(1)(A)(i); Fed. R. Civ. P. 6(d); *see* Fed. R. Civ. P. 55(a).

8. The Clerk should enter a default against EL Realty because it did not otherwise defend the suit. Fed. R. Civ. P. 55(a).

9. Because EL Realty did not file a responsive pleading or otherwise defend the suit, it is not entitled to notice of entry of default. *See* Fed. R. Civ. P. 5(a)(2); *New York Life Ins. Co. v. Brown*, 84 F.3d 137, 141-42 (5th Cir. 1996).

10. Plaintiff is therefore, entitled to entry of default against EL Realty because it has failed to file an answer to the Original Complaint or any other responsive pleadings. This entry of default is authorized by Rule 55 of the Federal Rules of Civil Procedure.

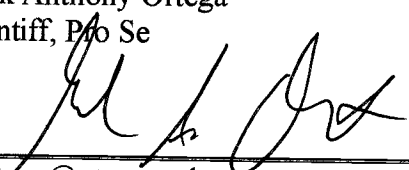
PRAYER

For the foregoing reasons, Plaintiffs respectfully request the Clerk of Court to enter a default against Defendant EL Realty in this matter.

Dated: September 8, 2024

Respectfully submitted,

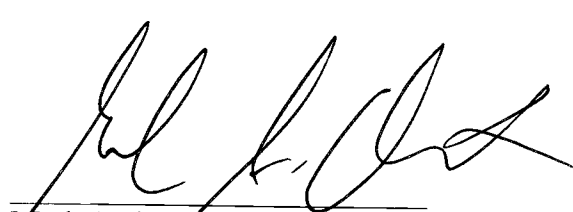
Mark Anthony Ortega
Plaintiff, Pro Se

By: 
morteaga@utexas.edu
PO Box 702099
San Antonio, TX 78270
Telephone: (210) 744-9663

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2024, I mailed the foregoing via first class mail for traditionally filing with the clerk of court for the U.S. District Court, Western District of Texas, and served a true and correct copy of this document on the parties and/or attorneys of record via email to info@elitelivingrealty.com and via first class mail to Defendant at the following address:

DFW Elite Living , LLC
c/o/ Elite Living Realty, LLC
13155 Noel Rd #900
Dallas, TX 75240


Mark Anthony Ortega